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April 19, 2004

Docket Management System  
U.S. Department of Transportation  
Room Plaza 401  
400 Seventh Street, SW  
Washington, DC 20590-0001

**Re: Docket No. FAA-1998-4521; Notice of Proposed Rulemaking (NPRM); National Air Tour Safety Standards**

The Aircraft Owners and Pilots Association (AOPA), representing over 400,000 members or two-thirds of the nation's general aviation pilots, submits the following comments to the Federal Aviation Administration's (FAA) notice on National Air Tour Safety Standards Notice of Proposed Rulemaking (NPRM) published in the Federal Register on October 22, 2003. The FAA's proposed rule would change the regulations governing sightseeing operations currently conducted under Federal Aviation Regulation (FAR) Part 91 within 25 nm of an airport; impose new requirements for air tour flights conducted under FAR Part 135; and increase the minimum number of flight hours required for pilots conducting charity fundraising flights.

AOPA contends that the FAA has issued a proposal that is not justified or supported by safety data or clearly defined safety concerns, and uses safety statistics that are irrelevant and incorrectly applied. In addition, the FAA has dramatically underestimated the economic effects of the proposal on the general aviation community.

Combining the three areas of sightseeing, air tours and charity flights under one umbrella rulemaking has added to the complexity of the proposal making it impractical, if not impossible, to implement. This also reflects a failure by the FAA to understand the uses of general aviation aircraft.

Based on AOPA's surveys and analysis of the safety and economic issues associated with this rulemaking, the FAA has grossly underestimated the true adverse impact of the proposed rule on hundreds of businesses and non-profit organizations. This is illustrated by the nearly 2000 negative comments to the rule docket from pilots and aviation businesses, not counting the hundreds of negative comments posted to the FAA's virtual online meeting.

***Withdraw the Air Tour Safety Standards NPRM***

AOPA strongly opposes the NPRM and requests that the FAA withdraw the NPRM immediately. Nothing in the original Federal Register notice or information that has been made available during the comments period, including the FAA virtual meeting, indicates that there is a significant safety issue on sightseeing and charity flights that the FAA must address by advancing this rulemaking initiative.

***Congress Says NPRM is Flawed – FAA Needs to Hold Public Meetings***

Members of the U.S. Congress have expressed concerns to the FAA over the proposal's adverse impact on the general aviation community. In addition to informal contacts by numerous members of Congress and Committee staff, the following fourteen members of Congress have sent letters to the FAA about the NPRM, with many requesting public meetings.

Sen. Conrad Burns (R - MT)  
Sen. John Ensign (R - NV)  
Sen. Lisa Murkowski (R - AK)  
Sen. Harry Reid (D - NV)  
Rep. Neil Abercrombie (D - HI)  
Rep. Shelley Berkley (D - NV)  
Rep. Marsha Blackburn (R - TN)  
Rep. Ginny Brown-Waite (R - FL)  
Rep. Randy "Duke" Cunningham (R - CA)  
Rep. Sam Graves (R - MO)  
Rep. Amo Houghton (R - NY)  
Rep. Darrell Issa (R - CA)  
Rep. Rick Larsen (D - WA)  
Rep. Stevan Pearce (R - NM)

For example, Rep. Rick Larsen of the House Aviation Subcommittee wrote, "I respectfully request a re-evaluation of this NPRM to determine the accuracy of the FAA's analysis concerning these restrictions." Sen. Conrad Burns of the Senate Aviation Subcommittee echoed the concern, saying, "The NPRM was developed as a response to the National Transportation Safety Board (NTSB) recommendations for making such flights safer ... However, from 1993 to 2000 the FAA states that accidents among the existing 400 Part 135 operators produced nearly twice as many fatalities than the existing Part 91 operators." In his letter to the FAA, Rep. Sam Graves says that, "the FAA failed to consider the true impact of their proposal on the general aviation community."

In addition to concerns over the proposed rule, members of Congress have called on the FAA to hold face-to-face public meetings to hear directly from those affected and to thoroughly evaluate the impact of the proposed rule.

We were pleased that the FAA on Friday April 16, finally honored AOPA's November 12, 2003, request for public meetings by releasing a formal notice.

***FAA's Virtual Public Meeting is Poor Substitute for Face-to-Face Dialogue***

In a letter dated November 12, 2003, AOPA requested that the FAA conduct a series of public meetings so that Agency representatives could hear in-person from individuals affected by the rulemaking. The need for the public meetings was emphasized in numerous subsequent contacts with FAA officials. Unfortunately, rather than holding face-to-face public meetings, the FAA chose to conduct a "virtual meeting." While a creative method to solicit comments, this amounted to nothing more than a one-way flow of information that can hardly be considered as meaningful dialogue. The online session was open for two weeks, in which time pilots submitted their comments anticipating that FAA staff would reply to the postings in a timely manner. In fact, more than half of the Agency's responses were posted in the last couple of days of the online meeting and many more were posted after the time that the FAA declared the "discussion" over.

For example, the following statement was posted by the FAA in a response to a participant's message two weeks after the online meeting closed: "We don't know which 'drastic changes' you are talking about. You are operating on hype and rumor and not on facts." This is a clear example of why this type of public forum is inadequate. Had the FAA been there in-person "real-time" they would have been able to listen and discover what this participant meant by "drastic changes".

Again, the Agency has responded five months following AOPA's request and has now scheduled two public meetings.

***Adverse Impact on Charities is Substantial***

The FAA's proposal to increase the minimum flight time for private pilots participating in charitable sightseeing events from 200 hours to 500 hours appears to be arbitrary. The Agency does not provide any safety data or statistics to support such a regulatory change. This is important because an AOPA study found that 22 percent of pilots surveyed who provide charity sightseeing flights would no longer be eligible if the higher hour requirement were implemented. This correlates with overall pilot data that shows 21 percent of the private pilot population has between 200 and 500 hours, so a large number of pilots would be eliminated from even being eligible to provide charity flights under the NPRM.

According to the FAA, the 500 hours of flight time for private pilots was proposed because charitable and community events typically involve a larger number of passengers, are held over a period of one to three days, and are generally a pleasure activity for the passenger. It is difficult to understand how this justifies a higher regulatory requirement.

Attempting to explain this flight time increase during its virtual meeting, FAA staff wrote, "If you are put into Part 135 then you must have a commercial pilot certificate and at least 500 hours (135.243). The 500-hour proposal was not arbitrary." This is not relevant. Conducting a charity flight no more than four events a year is not the same as providing commercial pilot services as part of a certificated operation.

AOPA contends that the 200-hour requirement is sufficient. These flights are conducted within limited operating parameters and scope of the sightseeing flights provided for charitable organizations and community events. The number of events are limited to four a year, restricted to day VFR, and are typically flown in the vicinity of an airport where the pilot is based and is thoroughly familiar.

The increase in the minimum flight hours, while it may seem reasonable to the FAA, will have a devastating effect on charitable organizations. The charities that responded to our survey reported average annual losses of nearly \$200,000. Organizations benefiting from these flights include Vietnam Veterans of America, Visiting Nurses Association, Wings of Mercy (medical flights), Volunteer Fire Departments, and local technical schools.

AOPA is opposed to a related change in the NPRM to FAR 61.113(d)(1). Changing the language to include the terms "compensation or hire" as proposed in the NPRM implies that private pilots that conduct flights for charitable events are engaging in commercial activities. This completely reverses the FAA's own policy statement issued April 23, 1993 that states, "As a matter of policy, taking into consideration the fact that Congress has specifically provided for the tax deductibility of some costs of charitable acts, we will not treat charitable deduction of such costs, standing alone, as constituting 'compensation or hire' for the purpose of enforcing [Paragraph] 61.118 or Part 135. If taking a charitable tax deduction for transporting persons or property is coupled with any reimbursement of expenses, or other compensation of any kind, then this policy does not apply."

### ***Sightseeing Flights – FAA’s Questionable Safety Argument***

The FAA has used questionable safety justification to support its proposal to eliminate the current ability to fly sightseeing flights under Part 91 within 25 sm of an airport. According to the FAA the NPRM is needed for increased safety, yet the data used to justify removing the sightseeing exemption is a mix of Part 91 and Part 135 accident reports. Of the 11 specific accidents cited in the Federal Register, eight occurred in Hawaii, and most were already operating under Part 135 flights.

Of the 75 accidents cited by the FAA’s Preliminary Regulatory Evaluation, Initial Regulatory Flexibility Analysis, and Trade Impact Assessment as sustaining this proposal, only 73 are discussed in the supporting documents.

The AOPA Air Safety Foundation reviewed the NTSB narratives of the 73 accidents and determined that **92 percent of the accidents cited would not have been prevented by this NPRM**. Only six **might** have been avoided if the operators were operating under Part 135.

The FAA makes questionable assumptions regarding the purpose of the flights in the 73 accidents because the NTSB accident reports do not provide enough detail to make the determination that these were commercial air tours. Some of the cited accidents included personal “sightseeing” flights that are not commercial air tours.

At least 6 of the 73 accidents were not Part 91 sightseeing flights.

- DEN93LA079 - described as “local personal flight” no mention of sight seeing.
- BFO93LA142 - no mention of sight seeing.
- NYC94LA104 - no mention of sight seeing.
- ANC94LA091 - aircraft was Canadian registered.
- MIA97LA155 - described as “personal flight”, pilot only had private certificate.
- NYC97FA178 - aircraft was doing touch and goes at a place other than where it departed. This would not be permitted under the 119.1 sightseeing exemption.

Correcting the FAA’s statistics to 67 Part 91 accidents and removing the 35 helicopter accidents, leaves 32 fixed wing accidents. This translates into an accident rate per million flight hours for sightseeing flights provided under Part 91 airplanes as 32.7 percent less than commercial air tours provided in Part 121/135 airplanes.

Eliminating the Part 91 sightseeing exemption and forcing all sightseeing operators to convert to Part 135 is not a reasonable solution given that Part 135 operators produced nearly twice as many fatalities than the Part 91 operators.

Finally, it is important to note that the primary reason for eliminating the Part 91 exemption under the National Parks Air Tour Management Final Rule was not because of safety, but was a regulatory means to control these operations for purposes of conducting air tours over national parks. To suggest that total elimination of the Part 91 sightseeing flights is necessary is not supported by accident data.

### ***Sightseeing Flights – Eliminating an Important Flight Activity***

Despite FAA estimates that over 40 percent of the operators currently providing sightseeing flights would shut down and eliminate over 700 small aviation businesses, the Agency proposed the rule. This is even worse, considering that there is no rational safety justification. The FAA in its economic analysis indicates that 685 of estimated 1,670 sightseeing operators will cease operations. According to the FAA this would result in a \$4.7 million net revenue loss (\$6,861 per operator).

### ***AOPA's Surveys and Economic Analysis Reveal Significant Adverse Impacts***

As dramatic as the FAA estimates may be, **the Agency has underestimated business closures by up to 100 percent.** While the FAA estimates 41 percent of sightseeing operators would go out of business, AOPA found that 82 percent of sightseeing operators surveyed would go out of business! AOPA projects that the proposal would result in 1370 active sightseeing providers stopping operations and being forced out of business.

This was based on results from an AOPA survey of Part 91 Sightseeing providers to quantify actual economic impact. Based on research work conducted by the Association, the economic loss is ten times that estimated by the FAA.

Two hundred twenty-four operators provided AOPA with information on projected losses that totaled more than \$7 million in the first year. The average projected annual loss is greater than \$33,000 per operator.

**The impact of the proposal is an astonishing \$45 million in the first year!**

### ***NPRM is Bad Public Policy***

The FAA's proposed rule unnecessarily penalizes Part 91 airplane sightseeing operators by imposing expensive certification and insurance requirements. Many of these operators provide unique opportunities for the flying public to enjoy sightseeing rides in vintage or open cockpit airplanes that may not qualify for certification or insurance under the proposed rule. The FAA has also failed to consider and address other economic impacts, such as the loss resulting from employee layoffs or forced sale of aircraft and related equipment, loss of potential students obtained through sightseeing flights, loss of fuel sales, impact on local businesses who benefit from sightseeing providers, such as restaurants, souvenir vendors, maintenance facilities, etc.

Flight school operators have expressed concerns that the FAA's proposal will have a significant adverse economic impact on their businesses. Many flight schools offer sightseeing rides that ultimately lead to individuals taking flying lessons. Most importantly, in addition to eliminating revenues from these rides, the proposed rule will have deprived future pilots of an opportunity to experience the excitement of their first flight.

Finally, the FAA, in its benefit/cost comparison combines helicopter and airplane accident rates to justify the removal of the 25-mile exception under Section 119.1(e)(2). The FAA, by not separating the helicopter accident rate from the airplane accident rate, invalidates the cost/benefit analysis violating Executive Order 12866.

### ***Adverse Impact on Commercial Air Tour Operators***

Although the issue has been addressed comprehensively by organizations representing commercial air tour operators certificated under Part 135, AOPA is concerned about the NPRM's effect on these businesses. The proposal would impose expensive new equipment requirements and adopt minimum altitudes, terrain standoff distances, visibility limits, and cloud clearance standards that when combined would result in weather related flight cancellations adversely affecting air tour operators. One Alaskan operator estimates the cost to their company at \$15 to \$18 million over a 10-year period. Those businesses located in and around national parks are already subject to numerous federal restrictions above and beyond those required of other types of air carriers. Special federal aviation regulations in the Grand Canyon and Hawaii, and the regulations implementing the National Parks Air Tour Management Act, all impose specific safety requirements that are intended to address the very same concerns as this NPRM, making it overly burdensome and unnecessary.

### ***SBA Office of Advocacy Says FAA's Analysis is "Deficient"***

The Small Business Administration (SBA) Office of Advocacy has also objected to the proposal in written comments because the FAA did not comply with the Regulatory Flexibility Act. The SBA goes on to say that the FAA's regulatory flexibility analysis is deficient because the FAA does not adequately explain the reasons for the proposed rule; appears to have underestimated the number of small entities affected by the proposal; and that the FAA did not accurately calculate the economic impacts of the proposed rule on small entities.

According to the SBA, it is not clear that FAA's estimates include flight schools or other charitable organizations such as flight museums, an important and sizeable segment of Part 91 operators, and that these entities could be significantly affected because they conduct Part 91 sightseeing flights either as a marketing tool or to raise funds.

SBA also noted that by not including flight schools and certain charitable organizations in its analysis, the FAA failed to capture a large number of small entities that are likely to be affected by the proposed rule. The SBA Office of Advocacy urged the FAA to perform outreach to the sightseeing and air tour industry to obtain a more complete understanding of the regulated entities, which would help the Agency to more accurately identify the number of small entities that will be affected.

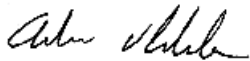
SBA contends that the rule could cause a substantial number of small operators to exit the commercial air tour industry and will impose significant cost burdens on existing air tour operators and others seeking Part 119 certification. The full extent of the economic impacts is uncertain because of data inadequacies in the initial regulatory flexibility analysis.

The SBA recommended that the FAA withdraw the rule until it obtains further data on the number of operators affected and on the economic impact of the proposed rule on Part 91 and Part 135 operators, including more accurate data on revenues and costs.

***Summary***

AOPA strongly opposes the NPRM and requests that the FAA withdraw the NPRM immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew V. Cebula".

Andrew V. Cebula  
Senior Vice President  
Government and Technical Affairs



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